

House Engrossed Senate Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 124

## **SENATE BILL 1003**

AN ACT

AMENDING SECTION 28-1381, ARIZONA REVISED STATUTES; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-1381, Arizona Revised Statutes, is amended to  
3 read:

4 28-1381. Driving or actual physical control while under the  
5 influence; trial by jury; presumptions; admissible  
6 evidence; sentencing; classification

7 A. It is unlawful for a person to drive or be in actual physical  
8 control of a vehicle in this state under any of the following circumstances:

9 1. While under the influence of intoxicating liquor, any drug, a vapor  
10 releasing substance containing a toxic substance or any combination of  
11 liquor, drugs or vapor releasing substances if the person is impaired to the  
12 slightest degree.

13 2. If the person has an alcohol concentration of 0.08 or more within  
14 two hours of driving or being in actual physical control of the vehicle and  
15 the alcohol concentration results from alcohol consumed either before or  
16 while driving or being in actual physical control of the vehicle.

17 3. While there is any drug defined in section 13-3401 or its  
18 metabolite in the person's body.

19 4. If the vehicle is a commercial motor vehicle that requires a person  
20 to obtain a commercial driver license as defined in section 28-3001 and the  
21 person has an alcohol concentration of 0.04 or more.

22 B. It is not a defense to a charge of a violation of subsection A,  
23 paragraph 1 of this section that the person is or has been entitled to use  
24 the drug under the laws of this state.

25 C. A person who is convicted of a violation of this section is guilty  
26 of a class 1 misdemeanor.

27 D. A person using a drug, AS prescribed by a medical practitioner  
28 licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of  
29 violating subsection A, paragraph 3 of this section.

30 E. In any prosecution for a violation of this section, the state shall  
31 allege, for the purpose of classification and sentencing pursuant to this  
32 section, all prior convictions of violating this section, section 28-1382 or  
33 section 28-1383 occurring within the past thirty-six months, unless there is  
34 an insufficient legal or factual basis to do so.

35 F. At the arraignment, the court shall inform the defendant that the  
36 defendant may request a trial by jury and that the request, if made, shall be  
37 granted.

38 G. In a trial, action or proceeding for a violation of this section or  
39 section 28-1383 other than a trial, action or proceeding involving driving or  
40 being in actual physical control of a commercial vehicle, the defendant's  
41 alcohol concentration within two hours of the time of driving or being in  
42 actual physical control as shown by analysis of the defendant's blood, breath  
43 or other bodily substance gives rise to the following presumptions:

1           1. If there was at that time 0.05 or less alcohol concentration in the  
2 defendant's blood, breath or other bodily substance, it may be presumed that  
3 the defendant was not under the influence of intoxicating liquor.

4           2. If there was at that time in excess of 0.05 but less than 0.08  
5 alcohol concentration in the defendant's blood, breath or other bodily  
6 substance, that fact shall not give rise to a presumption that the defendant  
7 was or was not under the influence of intoxicating liquor, but that fact may  
8 be considered with other competent evidence in determining the guilt or  
9 innocence of the defendant.

10          3. If there was at that time 0.08 or more alcohol concentration in the  
11 defendant's blood, breath or other bodily substance, it may be presumed that  
12 the defendant was under the influence of intoxicating liquor.

13          H. Subsection G of this section does not limit the introduction of any  
14 other competent evidence bearing on the question of whether or not the  
15 defendant was under the influence of intoxicating liquor.

16          I. A person who is convicted of a violation of this section:

17           1. Shall be sentenced to serve not less than ten consecutive days in  
18 jail and is not eligible for probation or suspension of execution of sentence  
19 unless the entire sentence is served.

20           2. Shall pay a fine of not less than two hundred fifty dollars.

21           3. May be ordered by a court to perform community restitution.

22           4. Shall pay an additional assessment of five hundred dollars to be  
23 deposited by the state treasurer in the prison construction and operations  
24 fund established by section 41-1651. This assessment is not subject to any  
25 surcharge. If the conviction occurred in the superior court or a justice  
26 court, the court shall transmit the assessed monies to the county  
27 treasurer. If the conviction occurred in a municipal court, the court shall  
28 transmit the assessed monies to the city treasurer. The city or county  
29 treasurer shall transmit the monies received to the state treasurer.

30           5. Shall pay an additional assessment of five hundred dollars to be  
31 deposited by the state treasurer in the public safety equipment fund  
32 established by section 41-1723. This assessment is not subject to any  
33 surcharge. If the conviction occurred in the superior court or a justice  
34 court, the court shall transmit the assessed monies to the county  
35 treasurer. If the conviction occurred in a municipal court, the court shall  
36 transmit the assessed monies to the city treasurer. The city or county  
37 treasurer shall transmit the monies received to the state treasurer.

38           6. Shall be required by the department, on report of the conviction,  
39 to equip any motor vehicle the person operates with a certified ignition  
40 interlock device pursuant to section 28-3319. In addition, the court may  
41 order the person to equip any motor vehicle the person operates with a  
42 certified ignition interlock device for more than twelve months beginning on  
43 the date of reinstatement of the person's driving privilege following a  
44 suspension or revocation or on the date of the department's receipt of the  
45 report of conviction, whichever occurs later. The person who operates a

1 motor vehicle with a certified ignition interlock device under this paragraph  
2 shall comply with article 5 of this chapter.

3 J. Notwithstanding subsection I, paragraph 1 of this section, at the  
4 time of sentencing the judge may suspend all but twenty-four consecutive  
5 hours of the sentence if the person completes a court ordered alcohol or  
6 other drug screening, education or treatment program. If the person fails to  
7 complete the court ordered alcohol or other drug screening, education or  
8 treatment program and has not been placed on probation, the court shall issue  
9 an order to show cause to the defendant as to why the remaining jail sentence  
10 should not be served.

11 K. If within a period of eighty-four months a person is convicted of a  
12 second violation of this section or is convicted of a violation of this  
13 section and has previously been convicted of a violation of section 28-1382  
14 or 28-1383 or an act in another jurisdiction that if committed in this state  
15 would be a violation of this section or section 28-1382 or 28-1383, the  
16 person:

17 1. Shall be sentenced to serve not less than ninety days in jail,  
18 thirty days of which shall be served consecutively, and is not eligible for  
19 probation or suspension of execution of sentence unless the entire sentence  
20 has been served.

21 2. Shall pay a fine of not less than five hundred dollars.

22 3. Shall be ordered by a court to perform at least thirty hours of  
23 community restitution.

24 4. Shall have the person's driving privilege revoked for one year.  
25 The court shall report the conviction to the department. On receipt of the  
26 report, the department shall revoke the person's driving privilege and shall  
27 require the person to equip any motor vehicle the person operates with a  
28 certified ignition interlock device pursuant to section 28-3319. In  
29 addition, the court may order the person to equip any motor vehicle the  
30 person operates with a certified ignition interlock device for more than  
31 twelve months beginning on the date of reinstatement of the person's driving  
32 privilege following a suspension or revocation or on the date of the  
33 department's receipt of the report of conviction, whichever occurs later.  
34 The person who operates a motor vehicle with a certified ignition interlock  
35 device under this paragraph shall comply with article 5 of this chapter.

36 5. Shall pay an additional assessment of one thousand two hundred  
37 fifty dollars to be deposited by the state treasurer in the prison  
38 construction and operations fund established by section 41-1651. This  
39 assessment is not subject to any surcharge. If the conviction occurred in  
40 the superior court or a justice court, the court shall transmit the assessed  
41 monies to the county treasurer. If the conviction occurred in a municipal  
42 court, the court shall transmit the assessed monies to the city treasurer.  
43 The city or county treasurer shall transmit the monies received to the state  
44 treasurer.

1           6. Shall pay an additional assessment of one thousand two hundred  
2 fifty dollars to be deposited by the state treasurer in the public safety  
3 equipment fund established by section 41-1723. This assessment is not  
4 subject to any surcharge. If the conviction occurred in the superior court  
5 or a justice court, the court shall transmit the assessed monies to the  
6 county treasurer. If the conviction occurred in a municipal court, the court  
7 shall transmit the assessed monies to the city treasurer. The city or county  
8 treasurer shall transmit the monies received to the state treasurer.

9           L. Notwithstanding subsection K, paragraph 1 of this section, at the  
10 time of sentencing, the judge may suspend all but thirty days of the sentence  
11 if the person completes a court ordered alcohol or other drug screening,  
12 education or treatment program. If the person fails to complete the court  
13 ordered alcohol or other drug screening, education or treatment program and  
14 has not been placed on probation, the court shall issue an order to show  
15 cause as to why the remaining jail sentence should not be served.

16           M. In applying the eighty-four month provision of subsection K of this  
17 section, the dates of the commission of the offense shall be the determining  
18 factor, irrespective of the sequence in which the offenses were committed.

19           N. A second violation for which a conviction occurs as provided in  
20 this section shall not include a conviction for an offense arising out of the  
21 same series of acts.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.